

# LBR Circular 19/01 Register of beneficial owners (“RBE”)



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Luxembourg, 25 February 2019

## **LBR Circular 19/01**

### **The Register of beneficial owners**

This circular is intended to present the new Register of beneficial owners, established by Chapter 2 of the law of 13 January 2019 establishing a Register of beneficial owners (hereinafter the "law of 13 January 2019").

The law of 13 January implements into national law the provisions of Article 30 of Directive (EU) 2015/849, which deal with information on beneficial owners, as amended by Directive (EU) 2018/843. LUXEMBOURG BUSINESS REGISTERS, which now manages the Trade and companies register (RCS), has been entrusted with the administrative management of this new register under the supervision of the Minister in charge of Justice, while the Luxembourg State remains the owner of the database.

The register of beneficial owners (RBE) aims at collecting, in respect of the entities covered by this law (1), adequate, accurate and up-to-date information on their beneficial owners (2) and to make it accessible to the public (3), professionals and national authorities designated as responsible for combating money laundering and terrorist financing.

#### **1. Scope of the RBE**

##### **1.1. Registered entities subject to the obligation to register their beneficial owners in the RBE**

Article 1(4) of the law of 13 January 2019 defines "registered entities", which are required to disclose the identity of their beneficial owners pursuant to Article 3 of the same law.

Entities registered in the Trade and companies register and referred to in Article 1, points 2° to 15°, of the amended law of 19 December 2002 on the Trade and companies register and the accounting and annual accounts of companies are therefore subject to this obligation.

**It results from this definition that all entities registered in the Trade and companies register must declare their beneficial owners to the RBE, with the sole exception of retailers which are natural persons.**

##### **1.2 Persons to be registered in the RBE**

Article 1(3) of the law of 13 January 2019 also defines the notion of "beneficial owner", referring to Article 1(7) of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing.

It is thus necessary to register "any natural person who ultimately owns or controls the customer or any natural person on whose behalf a transaction or activity is being conducted."

*The notion of beneficial owner shall include at least:*

a) *in the case of corporate entities:*

i) *any natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.*

*A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership;*

ii) *if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), any natural person who holds the position of senior dirigeant (manager);*

(b) *in the case of fiducies and trusts:*

(i) *the settlor;*

(ii) *any fiduciaire or trustee;*

(iii) *the protector, if any;*

(iv) *the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;*

(v) *any other natural person exercising ultimate control over the fiducie or trust by means of direct or indirect ownership or by other means;*

- (c) *in the case of legal entities such as foundations, and legal arrangements similar to trusts, any natural person holding equivalent or similar positions to those referred to in point (b)."*

*It is up to the entities referred to in the law of 13 January 2019 to establish who are their beneficial owners whose identity must be declared to the RBE.*

## **2. Declarations to the RBE**

### **2.1 List of information to be provided**

The information to be provided pursuant to Article 3 of the law of 13 January 2019 must be adequate, accurate and up-to-date in accordance with Article 4(2) of the law. A criminal sanction is prescribed by Article 20(2) of the law if the registered entity requests the RBE to register information that it knows is inaccurate, incomplete or not up-to-date.

#### **2.1.1. Information on beneficial owner(s)**

Article 3(1) of the law of 13 January 2019 lists the information to be included in the RBE concerning the beneficial owners of registered entities subject to the law.

The following information must therefore be notified as regards the person of a beneficial owner:

- Surname and first name(s)
- Nationality(ies),
- Date of birth (day, month and year),
- Place of birth,
- Country of residence,
- The precise private address or specific professional address mentioning:
  - For addresses in the Grand Duchy of Luxembourg: the usual residence appearing in the national register of natural persons or, for professional addresses, the locality, street and building number appearing in the National register of localities and streets, as provided for in Article 2, g) of the amended law of 25 July 2002 reorganising the administration of the land register and topography, as well as the postal code;
  - For addresses abroad: the locality, street and building number abroad, the postal code and the country;

- For persons registered in the National register of natural persons: the identification number provided for in the amended law of 19 June 2013 on the identification of natural persons;
- For non-resident persons not registered in the National register of natural persons: a foreign identification number;
- The nature and extent of the effective interests held.

As regards beneficial owners who do not have a Luxembourg national identification number, the manager of the RBE will not create such a number in the national register of natural persons. Only the foreign identification number provided by the applicant will be entered in the RBE.

### ***2.1.2 Specific case of companies that have their securities admitted to trading on a regulated market***

Paragraph (2) of the aforementioned Article 3 provides for the communication of specific information when the registered company, which falls within the scope of the law of 13 January 2019, has its securities admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another State which is a party to the Agreement on the European Economic Area or in another third country imposing obligations recognised as being equivalent by the European Commission within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

In such a case, the company is only required to register in the RBE the name of the regulated market on which its securities are admitted to trading.

## **2.2 Procedure for registration in the RBE**

Registrations in the RBE are made through declarations sent to the manager of the RBE by electronic mail on its website <http://www.lbr.lu/>, via the portal specifically dedicated to the RBE.

### ***2.2.1. Who carries out the registration?***

Article 4(1) of the law of 13 January 2019 provides that the registered entity or, where applicable, its agent, is required to carry out the registration of the beneficial owners of the entity.

The same article also permits the notary who prepares the constitutive instrument or any amending instrument of the registered entity to request the registration of the information required by the law.

Furthermore, LUXEMBOURG BUSINESS REGISTERS offers an assistance desk for registered entities or their agents which do not have an Internet connection or the necessary equipment to register online in the RBE. In this regard, the manager acts on behalf of the applicant on the basis of a mandate previously obtained from the latter, while the principal is therefore responsible for the registration.

### ***2.2.2. How is the registration carried out?***

The applicant must connect to the LUXEMBOURG BUSINESS REGISTERS website, on the portal dedicated to the RBE, using a secure connection method (via Luxtrust electronic certificate), in order to be able to access the RBE registration process.

After the applicant has identified the registered entity for which it is acting, an electronic declaration form is made available to the applicant, enabling it to provide the information required by the law. The declaration to the RBE is therefore concretely materialised by this form once completed.

In certain cases, supporting documents must also be attached to the declaration form. These documents are as follows:

- A copy of an official document enabling the establishment of the identity of the natural person to be registered, where the latter does not have a Luxembourg national identification number.

This document must be accompanied by a translation into French, German or Luxembourgish if the official document is not written in Latin characters.

However, if the person has a Luxembourg national identification number, no identity document needs to be provided.

- The duly justified request for the restriction of access to information, as referred to in Article 15, paragraph 1, of the law of 13 January 2019, when the entity or beneficial owner avails itself of this exception (see point 3.3).
- A document certifying that the entity is a company whose securities are admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another State party to the Agreement on the European Economic Area or in another third country imposing obligations recognised as being equivalent by the European Commission within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

Pursuant to Article 6(2) of the law of 13 January 2019, the manager has three working days from the date of the filing of the application by the registered entity or its agent to perform the

registration in the RBE. Once the application has been accepted, the information provided is recorded in the RBE and the manager will send the applicant a registration acceptance receipt, confirming to it that the registration has been duly performed in the RBE. Any supporting documents provided in support of the declaration shall also be returned to it.

However, if the application for registration is incomplete or does not comply with the legal and regulatory provisions, or if the information provided does not correspond to the supporting documents, the manager shall refuse the application and return it to the applicant, in accordance with Article 7 of the law of 13 January 2019. In this case, it shall invite the latter to regularise its application within fifteen days.

If the resubmitted application still does not comply with the legal and regulatory provisions or if the missing information or supporting documents have still not been provided, the manager shall notify the registered entity concerned of its reasoned refusal to register. The latter may file a judicial appeal against this refusal. The appeal shall be brought before the judge presiding over the chamber of the district court dealing with commercial matters for traders and before the president of the district court dealing with civil matters for the persons referred to in Article 1, points 6°, 7°, 8°, 10° and 11° of the amended law of 19 December 2002 on the Trade and companies register and the accounting and annual accounts of companies.

### ***2.2.3 How long does it take to register in the RBE?***

In general, Article 4 of the law of 13 January 2019 provides that the registration of information on beneficial owners and related amendments shall be requested within one month from the time when the registered entity governed by the law of 13 January 2019 became aware or should have become aware of the event that necessitates such registration or its amendment. A criminal sanction is prescribed by law in Article 20(1) in the event of non-compliance with this time limit.

With regard to the implementation of the RBE, the transitional provisions prescribed in Article 27 of the law of 13 January 2019 provide for a period of six months, as from the entry into force of the law of 13 January 2019, for registered entities or their agents to request the registration of their beneficial owners in the RBE. This period will enable the new database, the RBE, to be filled.

### ***2.2.4 What are the costs of registration in the RBE?***

The applicable fees, corresponding to the administrative costs, are set by Grand-Ducal Regulation.

During the six-month transitional period following the entry into force of the law of 13 January 2019, entities making applications to the RBE will be exempt from paying these administrative fees.

The declarations will therefore be made free of charge until 31 August 2019 inclusive, which is the expiry date of the transitional period.

### **3. Public consultation of the RBE**

Pursuant to Article 27 of the law of 13 January 2019, the RBE may only be consulted at the end of the six-month transitional period following the entry into force of the law.

As a consequence, the RBE will only be available for consultation from 1 September 2019.

#### **3.1 Online consultation of the RBE**

The public has free access to the RBE through the LUXEMBOURG BUSINESS REGISTERS website [www.lbr.lu](http://www.lbr.lu) and via the portal specifically dedicated to the RBE.

Searches are carried out using either the registration number of the entity in the Trade and companies register or its name.

The information available to the public is listed in Article 12 of the law of 13 January 2019. In this respect, all the information registered in the RBE concerning the pre-selected entity may be consulted, with the exception of data relating to the specific address and identification number of the registered beneficial owners, as well as data relating to a particular beneficial owner for whom a request for restriction of access to its information has been accepted by the manager of the RBE pursuant to Article 15 of the law of 13 January 2019.

If the entity has not made a registration in the RBE or has been deleted from the RBE, the search will be unsuccessful and will not display a result.

#### **3.2 RBE extracts**

An extract may be ordered from the RBE containing the registrations made for a registered entity, in accordance with Article 14 of the law of 13 January 2019. The request is made for a specific entity, determined by its Trade and companies register registration number, and is addressed to the manager of the RBE via its website. If no information has been entered in the RBE concerning an entity, a certificate may also be ordered attesting to this fact.

Information relating to the precise addresses and identification numbers of the registered beneficial owners, as well as information relating to a particular beneficial owner for whom a request for restriction of access to its information has been accepted by the manager of the RBE pursuant to Article 15 of the Law of 13 January 2019 does not appear on the RBE extracts.

Extracts and certificates may be issued in electronic format or on secure paper and therefore bear the electronic or handwritten signature of the manager respectively.



These documents are issued against payment of an administrative fee which is fixed by Grand-Ducal Regulation.

### **3.3 Restriction of access to information of a beneficial owner**

Article 15 of the law of 13 January 2019 allows data provided to the RBE concerning beneficial owners who are disproportionately exposed to a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or is otherwise incapable, not to be made publicly available, if requested by the registered entity or beneficial owner concerned. If such beneficial owner is therefore registered in the RBE, the information concerning it will not be displayed on the RBE portal or displayed on the extracts issued by the manager of the RBE. It shall be replaced by a statement that the information may not be consulted, pursuant to Article 15.

Requests for restriction of access pursuant to the aforementioned Article 15 shall be addressed to the manager of the RBE by the applicant entity or the beneficiary itself through the website of LUXEMBOURG BUSINESS REGISTERS. They must be justified because they are subject to an assessment by the manager, who must assess in detail the exceptional nature of the circumstances supporting the request. The manager may object to the request for restriction.

In practice, as soon as a request for a restriction has been received by the manager of the RBE, the information relating to the beneficial owner to whom the request relates shall be made inaccessible to the public, even before a decision has been taken by the manager, until the manager has made a decision on the request.

- If it appears that the manager refuses the request to restrict access to the beneficial owner's information, the applicant then has 15 days to lodge an appeal against the manager's decision, during which time the information may still not be consulted by the public.
- If the manager grants the request for restriction of access, the information shall remain inaccessible to the public for the entire duration for which the access restriction period has been accepted.

As a consequence, beneficial owners providing evidence of a disproportionate risk as set out above must, in any event, be registered in the RBE, but their information will not be available to the public once a request for restriction of access has been submitted and accepted by the manager.

This restriction of access to information is limited in time and may only be granted for the duration of the circumstances justifying it, without exceeding a maximum period of three years. Once the time limit has expired, the information shall be made available to the public again, unless the request for restriction of access has been renewed at the latest one month before the expiry date of the restriction.

The decisions taken by the manager in this particular context, whether positive or negative, are included in a list published on the RBE portal. This list includes entities for which a request to restrict access to information from at least one of its beneficial owners has been processed by the manager. The entity concerned shall appear on this list for one month, from the time of the decision taken by the manager.

The texts applicable to the RBE are available on the website of LUXEMBOURG BUSINESS REGISTERS, [www.lbr.lu](http://www.lbr.lu).

### **For LUXEMBOURG BUSINESS REGISTERS**

(s) Yves Gonner

Director (Directeur)

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#### ***The notes presented by the LUXEMBOURG BUSINESS REGISTERS:***

- are of a general nature and do not address the particular situation of a natural or legal person;
  - are of a documentary and explanatory nature;
  - are intended to answer a number of questions that users of the Trade and companies register and the Register of beneficial owners may have;
  - have no legal value and in no way incur the liability of LUXEMBOURG BUSINESS REGISTERS;
  - are not necessarily complete, exhaustive, accurate or up-to-date;
  - do not constitute professional or legal advice;
  - represent only the opinion of LUXEMBOURG BUSINESS REGISTERS on a number of issues, subject to the interpretation that may be given by the Courts and Tribunals.
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